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P.R. No. 3400/06
Presented by Shri S. Shrivastava 27.3.06
dated 6/7/06

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3339 /2006 SINGLE BENCH

PETITIONER : Smt. Chandrakala Dhruv,
W/o Shri Om Prakash Thawait,
aged about 48 years,
Occupation- Service, presently
posted as Tahsildar, Pamgarh, R/o
Tahsildar's Quarter, Pamgarh
District- Janjgir Champa.

- Versus –

RESPONDENTS :
1. State of Chhattisgarh,
Through Secretary, Department of
Revenue, Mantralaya, D.K.S.
Bhawan, Raipur (C.G.).
2. Collector,
District- Janjgir Champa (C.G.).
3. Shri Manohar Ram Gaikwad,
Tahsildar, Bilaspur (C.G.).

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6/7/06

WRIT PETITON UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR DIRECTION TO DO JUSTICE IN THE MATTER.

HIGH COURT OF CHHATTISGARH, BILASPUR,

WRIT PETITION No.3339 of 2006

PETITIONER Smt. Chandrakala Dhruv w/o Shri Om Prakash Thawait, aged about 48 years, Occupation-Service, presently posted as Tahsildar, Pamgarh, R/o Tahsildar's Quarter, Pamgarh, District-Janjgir Champa

Versus

RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Department of Revenue, Mantralaya, DKS Bhawan Raipur, (Chhattisgarh)
2. Collector, District- Janjgir Champa(CG)
3. Shri Manohar Ram Gaikwad, Tahsildar, Bilaspur(CG)

Writ Petition under Article 226/227 of the Constitution of India

Appearance:

Shri I.S. Sahu, counsel for the petitioner.

Shri A.S.Kachhawaha, Government Advocate for the State/ respondents No.1 & 2.
Shri V.S.Agrawal, counsel for respondent No.3.

ORAL ORDER
(30.08.2007)

SUNIL KUMAR SINHA, J.

Heard finally with the consent of the parties.

The petitioner, who is presently working on the post of Tahsildar, Pamgarh, has filed this petition being aggrieved with the order dated 8.6.2006(Annexure P-4), passed by the Government, by which, respondent No.3, who was working on the post of Tahsildar, Bilaspur, has been transferred to Pamgarh, District- Janjgir in the capacity of Tahsildar, whereas, there was no order in relation to transfer of the petitioner. When this matter came into notice of respondent No.2, Collector, district-Janjgir Champa, he invited the attention of the Government by sending a memo dated 1.7.2006

(Annexure P-6) and when no action was taken on the aforesaid memo, the Collector himself made an internal arrangement by passing another order dated 5.7.2006(Annexure P-7), whereby the petitioner was directed to be posted as Additional Tahsildar, Sheorinarayan and respondent No.3 was directed to be posted as Tahsildar, Pamgarh. It is at this stage, the petitioner had filed the writ petition.

While entertaining this writ petition on 10.7.2006, this Court stayed the effect and operation of the 2 impugned orders i.e. dated 8.6.2006(Annexure P-4) and 5.7.2006 (Annexure P-7), whereby, the petitioner was directed to work as Additional Tahsildar, Sheorinarayan and respondent No.3 was directed to work as Tahsildar, Pamgarh.

Return has been filed on behalf of the State/respondents No. 1 & 2. No return has been filed on behalf of respondent No.3.

It is contended by respondents No.1 & 2 that in fact, the petitioner has not been transferred, but her place of posting has been changed. They have also contented that posting of an employee does not necessarily mean that he has been transferred somewhere else and the posting only amounts to distribution of work between 2 or more persons posted at the same place, therefore, there is no infirmity in the order dated 5.7.2006(Annexure P-7), passed by the Collector.

Learned counsel for the petitioner argues that admittedly, the petitioner is senior to respondent No.3. Firstly, the order of respondent No.3, posting him as Tahsildar in place of the petitioner, itself is a wrong order because there was no order of transfer for the petitioner. He secondly argues that if respondent No.3 comes as Tahsildar, Pamgarh and the petitioner goes as Additional Tahsildar, Sheorinarayan, it will go against the convention because it is always to be kept in mind that the main post is held by the senior and the Additional posts are held by the juniors to him/her in the cadre.

Against the said argument, raised by learned counsel for the petitioner, learned counsel for the State argues that it is the discretion with the State that if 2 persons are posted at one place, then who should be given a particular charge.

So far as learned counsel for respondent No.3 is concerned, he submits that presently respondent No.3 is working at Bilaspur and he has no grievance if the order of transfer is set aside or quashed by this Court.

After hearing the arguments of learned counsel for the respective parties, this Court is of the opinion that if respondent No.3 was to be transferred as Tahsildar Pamgarh, then there should have been an order of transfer for the petitioner also, as two persons cannot be posted on the same post at one place. Since there was no order of transfer of the petitioner and even after bringing this fact to the notice of the State by the concerned Collector, the State did not take any action to rectify the irregularity, order dated 8.6.2006 (Annexure P-4) passed by the Government, which itself suffers with such irregularity, cannot be sustained.

The order is quashed on the said count alone. Since respondent No.3 has not joined at Pamgarh or at any other place in the said Tehsil, there is no necessity of passing any order in relation to the impugned order issued by the Collector on 5.7.2006 (Annexure P- 7).

In the result, the petition is allowed. The order dated 8.6.2006(Annexure P-4), transferring respondent No.3 in place of the petitioner, without passing any order in relation to the petitioner, is hereby quashed and set aside.

No costs.

Sd/-
Sunil Kumar Sinha
Judge

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